
(1994) 09 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 1933 of 1989

Hiralal Phukan

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 09-09-1994

Acts Referred:

Assam Land (Requisition and Acquisition) (Amendment) Act, 1964 — Section 3, 3, 3(1), 3(1)

Citation : (1994) 2 GLJ 345

Hon'ble Judges : D.N.Baruah, J

Bench : Single Bench

Advocate : R.Borbora , J.P.Bhattacharjee, B.Banerjee, A.C.Borbora, Advocates appearing for Parties

Judgement

1. Petitioner along with Shri PC Katoky, a Senior Advocate of this Court jointly purchased a plot of land measuring 2 Kathas and 2 Lechas covered by Periodic Patta No. 47 and Dag No. 185 (new) in Beltola Mouza, Village Dispur from one Shri Jadav Chandra Sarma of Guwahati. After the aforesaid purchase, the petitioner by yet another registered deed of sale dated 19.12.72 purchased from Shri Bijuli Sahani another plot of land measuring 5 Lechas covered by the said dag and patta. Thereafter, by a registered deed of sale dated 3.4.73 Shri Pabitra Chandra Katoky with whom the petitioner jointly purchased the adjacent plot of land measuring 2 Kathas 2 Lachas in the name dag, sold his right, title and interest over his share of land to the petitioner. The petitioner thus became the absolute owner of the total area of land measuring 2 Kathas 7 Lechas covered by aforesaid Periodic Patta No. 47 and Dag No. 185 (B) new). Out of the aforesaid total area, an area measuring 2 Kathas 2 Lachas of land had been duly mutated in the name of the petitioner on 11.3.89 and the present case relates to the said plot of land. The remaining 4 Lachas of land was mutated thereafter on 20.8.88 in the name of the petitioner.

2. On the aforesaid land measuring 2 Kathas 7 Lechas petitioner started a

restaurant business under the name and style "Hotel Saumar" in 1975. In 1984 the petitioner prepared a plan for construction of a commercial complex on the aforesaid plot of land in place of the old Assam type building and for that purpose he submitted application seeking permission to erect a commercial building on the eastern side of his plot.

3. By order dated 12.9.85 issued under Memo No. MCG/BP/981/77/22, the Commissioner, Gauhati Municipal Corporation accorded permission for construction of the building. Thereafter, the petitioner dismantled the old Assam type hotel building and in the early part of 1986 completed the construction of the RCC building and let out to various persons. Thereafter, by application dated 19.6.89, the petitioner requested the Gauhati Municipal Corporation for permission to extend the aforesaid building towards the northern side of the plot. The aforesaid application was still pending.

4. In the month of September, 1989 some officials and workers of PWD constructed a drain on GS Road and Basistha Road (Rajendra Prasad Road) surrounding the land belonging to the petitioner as well as other plots. At the time of construction of the said drain, the aforesaid personnel of the Public Works Department wanted to dig a stretch of land along the eastern and western boundary of the petitioner's plot without following the procedure of law. The petitioner voluntarily surrendered the stretch of land measuring 56 feet in breadth along the eastern, western and northern side of the plot. The construction of the said drain as well as the foot path with slabs was complete in the month of September/October, 1989.

5. On 20.11.89 at about 9 AM some persons from the Public Works Department led by the SubDivisional Officer, PWD, Guwahati, Khanapara Subdivision as well as persons from Guwahati City Division(Roads) suddenly and forcibly removed the fencing all along the northern side of the petitioner's aforesaid land and after digging the land started constructing a huge wall across the petitioner's plot from East to West. On coming to know about it the petitioner protested against it as they were going to take over the entire 1 Katha 11 Lechas of petitioner's vacant land. The petitioner was then informed that the said land was requisitioned under the provisions of Assam Land (Requisition and Acquisition) Act, 1964, (for short, the Act).

6. As no notice was ever served on the petitioner in respect of acquisition or requisition of the plot of land in question or any portion thereof since the time of his purchase of the said land, he rushed to the office of the Collector as well as Deputy Commissioner and after pursuing authority and after making all efforts on 29.11.89 he was handed over a copy of Annexure D notice dated 5.5.88 issued under section 4 (1) of the Act. In the said notice it was mentioned that a plot of land measuring 3 Kathas 14 Lechas described in the schedule to the said notice had already been requisitioned under section 3 (1) of the Act for the purpose of construction of a drain.

7. According to the petitioner no notice was ever served before taking over possession even though the petitioner was well known in the said locality having good reputation, etc. The petitioner has challenged the aforesaid notice under section 3 (1) in respect of the said land. Regarding the notice under section 4 (1) of the Act, the petitioner stated that although the same bore the date of 5.5.88, the said notice was never served upon the petitioner. On the face of the notice dated 5.5.88 it could be clearly seen that the land described in the schedule to the said notice mentioned a total area of 3 Kathas 14 Lechas spreading over four adjacent dags and pattas. Besides, all the requisition formalities were not complied with, therefore, the entire proceeding was vitiated by want of jurisdiction.

8. In the aforesaid notice dated 5.5.88 although the total area of 3 Kathas 14 Lechas had been shown as requisitioned from the three named pattadars, it was not mentioned as to from which owner exactly what area of land was requisitioned and, as such, the entire requisition proceeding was illegal and without jurisdiction being contrary to the provisions of law. The respective boundaries of the plots of land of different pattadars requisitioned had not been mentioned. Therefore, the aforesaid notification is invalid. The purported requisition of the wide area of 3 Kathas 14 Lechas including 1 Katha and 11 Lechas falling on the northern side of the petitioner's land apparently was not for the purposes stated in the notice. If at all the said area was taken over for an oblique purpose in the name of requisition of the land under the Act. Hence the present petition.

9. This Civil Rule was admitted on 1.12.89. Notices were served on the respondents as far back in 1990, However, the respondents did not file any affidavit in opposition. This case was heard on 14.6.94 and this Court considered it necessary to see the notice issued by the competent authority for requisition of the land to verify as to whether the notice was issued in accordance with the provisions of section 3 and, accordingly, the Government Advocate appearing on behalf of the respondents was asked to produce the records and also the notice under section 3 (1) of the Act and the basis of satisfaction of forming an opinion for requisition of the land within 3 days time. On 17.6.94 Mr. Banerjee, learned Government Advocate informed this Court that he would not receive the record. Therefore, the case has to be decided only on the basis of averments made in the petition and the documents annexed thereto.

10. I fail to understand why Government Advocate was unable to file an affidavit in opposition against the averments made in the petition. Besides, I find no reason why Government should fail to produce the records in spite of the request of the Court more specifically the notice and the basis of satisfaction for forming an opinion for issuing a notice under section 3 (1) of the Act.

11. It is an admitted fact that the aforesaid land was requisitioned under the Act. The object of this Act is to consolidate the law of requisition and speedy acquisition of the premises and the land for certain purposes. Power to

requisition a particular land or a premises is envisaged under section 3 (1). Under the said section if in the opinion of the State Government or any person authorised in this behalf by the State Government, it is necessary so to do for maintaining the supplies and services essential to the life of the community or for providing proper facilities for accommodation, transport, communication, irrigation, flood control and antierosion measures including embankment and drainage or for providing land individually or in groups to landless, flood affected or displaced persons or to society registered under the Assam Cooperative Societies Act or a company incorporated under the Companies Act formed for the benefit and rehabilitation of landless, flood affected or displaced persons or to provide land for the purpose of construction of border fencing and allied works including border roads and check posts, etc. According to the petitioner, taking over of the land including the land of the petitioner is contrary to the provisions of law and without jurisdiction.

11. Heard both sides.

12. In the present case the land was acquired for construction of drainage in the Guwahati city. Therefore, if in the opinion of the State Government or any person authorised in this behalf the land was actually required to be requisition for the purposes mentioned in the said section, it was the State Government or any other officer so empowered to make an order. After making an order under subsection (1) of section 3, the said order shall have to be served in the prescribed manner on the owner of the land and where the order relates to a land in occupation of a tenant, also to such tenant. Where the order of requisition is made by any authority other than the State Government, any person interested in the land, within 30 days from the date of service of the notice may appeal to the State Government and the decision of the State Government shall be final.

13. After making an order under section 3 and after service of the order on the land owner and in case it is under the occupation of the tenant, the authority can take possession of the requisitioned land as per the provisions laid down under section 4 of the said Act. Under the said section where any land has been requisitioned, the State Government or the person authorised in this behalf by the State Government may, by order in writing, direct the owner, the tenant or any other person who may be in possession of the land whether at the time of requisition or at any time thereafter before the land is released from requisition under section 8 to surrender or deliver possession thereof to the Collector or any other person duly authorised by him in this behalf within such days of service of the order as may be specified therein. If any person refuses or fails to comply with an order made under subsection (I), the State Government or the person authorised in this behalf, in addition to any other provisions in the Act, may take possession of the land and may for that purpose, use such force as may be necessary. Any order under subsection (1) is required to be served in the prescribed manner on the owner of the land and also on the tenant where the

land is under occupation of a tenant.

14. On reading section 3 of the Act it is abundantly clear that before passing an order of requisition under subsection (1) the State Government or any person authorised in this behalf must be satisfied that it is necessary to requisition the land for the purpose mentioned in the said section. But if while forming an opinion by the State Government or any other person authorised in this behalf, the opinion is not based on record, then the order of requisition cannot be said to be valid and the subsequent proceeding may also become illegal. There is specific averments made in the writ petition that no notice as required under section 3 (1) was ever served on the petitioner though the petitioner was well known in the locality. The petitioner further stated that he was absolutely in darkness on what ground the land was requisitioned. In all probability the land was requisitioned and acquired for the purpose of construction of a drain with a foot path. For that purpose 56 feet of land was necessary and in fact the said land had already been taken over and the drain was already constructed and the foot path was made. Over and above that an additional plot of land was also requisitioned by the said order. For what purpose the said additional land of the petitioner was requisitioned was not indicated in the order. At least there is nothing on the record to come to a different conclusion. The condition precedent for requisition of any land or premises is the satisfaction of the State Government or any other officer on this behalf to form an opinion that the land or premises is necessary and for that purpose there must be some report or a scheme put forward either by the Embankment or Drainage Department or by any other department of the Government. Strangely no such report has been produced. The Act has been enacted with the sole object to amend and consolidate the law for requisition and speedy acquisition of premises and land for certain public purposes. The scope for requisition of land under this Act is limited. It is only when any one of the conditions is in existence as mentioned in section 3 (1) of the Act. Admittedly in this case a drain was constructed. The breadth of the drain was 56" only and the length of the land would be much and for construction of the drain may not be the same as it was requisitioned. Besides, as stated by the petitioner the notification was absolutely vague and it did not contain what was the total area that the Government wanted to take from the petitioner. But the authorities have taken possession of much more land. It is further stated that on 28.11.89 the PWD officers including the respondents entered into the premises, removed the fence and started construction of a concrete wall across the land.

15. Mr. AC Borbora, learned counsel for the petitioner submitted that the requisition or acquisition of the land over and above the land that was used for drain was without jurisdiction and not in accordance with the provisions of the Act. Therefore, it was liable to be set aside. He further submitted that no notice was ever served on the petitioner under section 3 (1) of the Act. Besides, section 4 (I) notice was also not served on the petitioner. Petitioner came to know only after enquiry that the land was acquired under the provisions of the Act.

According to Mr. Borbora, petitioners was the absolute owner of the land measuring 2 Kathas 2 Lechas included in Patta No 47, Dag No. 185 (B) of Beltola Mouza, Village Dispur. By Annexure A order dated 11.3.82 of the SDC, Gauhati Circle the said land was mutated in the name of the petitioner on the basis of a valid sale deed. Permission was accorded by the GMC for construction of a building and in pursuance thereof a building was constructed keeping a vacant space which is now the subject matter of the Civil Rule. As no notice was served on the petitioner he could not file any objection. Annexure D notice shows that the land measuring 3 Kathas 14 Lechas included in Periodic Patta Nos. 15, 47 (A), 47 (B), 50, Dag Nos. 187/BC, 185/B, 186/BC and 184 (B). Therefore, it appears that the land measuring 3 Kathas 14 Lechas was requisitioned from various pattadars as mentioned therein. To what extent the land was acquired from the petitioner has not been indicated. From the statements made by the petitioner it is seen that over and above the land that was required for making the drainage, an additional area of land was also taken over by encircling the same. In the petition the petitioner craved leave to file the photographs as well as the sketch map at the time of hearing and accordingly two photographs and a sketch map were placed before this Court copies of which were also supplied to the Government Advocate. Learned Government Advocate did not controvert the same.

16. It is true, even without record the Court can very well come to the conclusion that the land used for the purpose of constructing drain is definitely one of the purposes mentioned in section 3 (1) of the Act, but why the additional land was taken over by encircling as alleged is not known. Therefore, this Court is unable to accept that the land which was taken over by the authorities over and above the land that was required for drainage purpose is actually requisitioned for one of the purposes mentioned in section 3 (1) of the Act, That being the position, I have no hesitation to come to the conclusion that the said additional land taken over was actually not required under the provisions of section 3 (1) of the Act. Therefore, I find full force in the submission of Mr. Borbora. It is really a sad state of affairs that the Government in such case should remain silent without producing the record and without filing a counter affidavit to enable the Court to determine under what circumstances the land over and above the land used for the drainage purpose was taken over.

17. In view of the above, I hold that the land of the petitioner other than the land used for drainage was not taken over under the authority of law. Therefore, the authority cannot retain the said land. Because of the taking over of the aforesaid additional land without the authority of law the petitioner is deprived of the legitimate right to enjoyment of the said land. Therefore, I dispose of this writ petition with a direction to the respondents to immediately release the said additional land belonging to the petitioner other than the land used for construction of the drain. As the land remained under possession of the authority without the sanction of law the petitioner is entitled to get a reasonable compensation. I, therefore, direct the Deputy Commissioner to assess the

compensation on the basis of market rental value and pay the said compensation to the petitioner within a period of 3 months from today.

18. In the facts and circumstances of the case I award a cost of Rs. 500/to be paid to the petitioner.